

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of Closed Captioning and Video
Description of Video Programming

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) MM Docket No. 95-176
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To: The Commission

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COMMENTS

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys, hereby submits its initial comments in response to the *Notice of Inquiry* ("NOI") issued in the above-captioned proceeding.^{1/}

I. BACKGROUND AND STATEMENT OF INTEREST.

In the *NOI*, the Commission has asked video programming providers to submit information on the current availability, cost and uses of closed captioning and video description services, for the purpose of evaluating what further Commission action is necessary to ensure that these services are widely available to viewers with hearing or visual disabilities.^{2/} Not long

^{1/}*In the Matter of Closed Captioning and Video Description of Video Programming*, FCC 95-176 (rel. Dec. 4, 1995). By *Order* released January 22, 1996, the FCC extended the comment deadline in this proceeding to February 28, 1996. *Order Granting Extension of Time for Filing Comments*, DA 96-53 (rel. Jan. 22, 1996).

^{2/}Closed captioning is hidden as encoded data transmitted within the vertical blanking interval of the television signal. A viewer wishing to see the closed captioning must use a set-top decoder with his or her television or a television with built-in decoder circuitry. Video description provides audio descriptions of a program's key visual elements that are inserted during the natural pauses in the program's dialogue. To receive the service, the audience member must have either a television that is capable of receiving the Second Audio Program or "SAP" channel, or a television adapter for the SAP channel. *NOI* at ¶¶ 3, 6.

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after the Commission released the *NOI*, President Clinton signed into law the Telecommunications Act of 1996 (the "1996 Act"). Section 305 of the 1996 Act adds a new Section 713 to Title VII of the Communications Act of 1934, as amended, requiring the Commission to initiate essentially the same proceeding it has already started with the *NOI*.^{3/}

WCA is the principal trade association of the wireless cable industry. Its membership includes virtually every wireless cable operator in the United States, the licensees of many of the Multipoint Distribution Service ("MDS") stations and Instructional Television Fixed Service ("ITFS") stations that lease transmission capacity to wireless cable operators, producers of video programming, and manufacturers of wireless cable transmission and reception equipment. Accordingly, WCA has a vital interest in both the subject matter of the *NOI* and the Commission's implementation of the closed-captioning and video description provisions of the 1996 Act.

II. ANY CLOSED CAPTIONING OR VIDEO DESCRIPTION REQUIREMENTS ADOPTED BY THE COMMISSION SHOULD ACCOUNT FOR THE SPECIAL CIRCUMSTANCES FACED BY THE WIRELESS CABLE INDUSTRY.

As a preliminary matter, WCA should emphasize that it fully supports the effort by Congress and the Commission to promote the distribution of closed captioning and video description services through single-channel broadcast television and through multichannel technologies such as wired cable, wireless cable, and DBS. However, WCA also believes Congress correctly directed the Commission in the 1996 Act to exempt from its closed captioning regulations "programs, classes of programs or services for which the Commission has

^{3/}47 U.S.C. § § 613(a)-(b) (1996).

determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming.”^{4/} WCA thus offers its comments in a spirit of cooperation, with the intent of offering suggestions as to how any Commission regulation of this area might best achieve the laudable objectives of this proceeding, without imposing undue economic burdens on the wireless cable industry.

At the present time, wireless cable operators rely heavily on established program suppliers such as cable programming networks (*e.g.*, HBO, ESPN, CNN) and broadcast signals for their commercial programming. Most wireless cable systems voluntarily retransmit to their subscribers intact any closed-captioning provided with that programming.^{5/} The wireless cable subscriber in turn can view the programmer-supplied closed captioning so long as he or she employs a television set or special decoder with closed captioning capability.

It has been the wireless cable industry’s experience that this is the most efficient, cost-effective method of providing closed captioning to its subscribers. As already noted by the FCC, it costs roughly \$2,500 and 20-30 person-hours to close caption a one-hour program.^{6/} Furthermore, recent testimony before Congress indicates that the cost of video description runs

^{4/}47 U.S.C. § 613(d)(1) (1996). The 1996 Act also authorizes the FCC to grant such exemptions on a case-by-case basis where imposition of closed-captioning requirements would result in an “undue economic burden” on a video programming provider. 47 U.S.C. § 613(d)(3) (1996).

^{5/}As discussed below, the sole exceptions known to WCA involve situations where the scrambling system employed by the operator prevents the use of VBI line 21 for the transmission of closed captioning.

^{6/}See *NOI* at ¶ 18.

from \$2,000 to \$5,000 per hour of programming.^{7/} Multiplied over hundreds, if not thousands of programs transmitted by a wireless cable system each day, these costs would be prohibitive even for the relatively small number of operating wireless cable systems with an established subscriber base.

Accordingly, WCA submits that any closed captioning requirements adopted in this proceeding should be imposed on the producers of programming. The alternative, *i.e.*, requiring every wireless cable operator in the United States to incur duplicative equipment, labor and administrative costs associated with providing closed captioning for potentially hundreds of programs over multiple channels, would cause exactly the type of financial burden on the wireless cable industry which Congress sought to avoid in enacting the closed captioning provisions of the 1996 Act.^{8/} Indeed, the magnitude of these costs on an industry-wide basis is certainly what motivated Congress to recognize that “[I]t is clearly more efficient and

^{7/}*See id.*

^{8/}It is worth noting that imposition of closed captioning requirements on cable networks rather than the distributors of cable network programming should not create the jurisdictional problem alluded to by the FCC when it required cable systems to comply with commercial limits for children’s programming under the Children’s Television Act of 1990. See *In the Matter of Policies and Rules Concerning Children’s Television Programming*, 6 FCC Rcd 5093, 5094 (1991). There, the FCC noted that the Act was silent on any exemption for passively retransmitted cable network programming, and that without cable operator liability the bulk of children’s cable programming would be beyond the statute. By contrast, the legislative history of the 1996 Act reflects that Congress intended the term “provider” in new Section 713(d)(1) (47 U.S.C. § 613(d)(1)) to include cable networks. H.R. Rep. 104-204, 104th Cong., 1st Sess. at 114 (1995) (“House Report”). Hence, it is not necessary to impose closed captioning obligations on wireless cable operators, or on MDS or ITFS licensees who lease their channels to wireless cable operators, to ensure that the cable network programming retransmitted via wireless cable is closed captioned.

economical to caption programming at the time of production and to distribute it with captions than to have each delivery system or local broadcaster caption the program.”^{9/}

For this reason, WCA submits that any requirement to close caption programming should be imposed on the producer of that programming, rather than on local distributors such as wireless cable system operators.^{10/} Of course, certain programming, particularly that which is not widely distributed, must be exempted from any closed captioning requirement. As Congress made clear, in considering exemptions, the Commission should consider:

(1) the nature and cost of providing closed captions; (2) the impact on the operations of the program provider, distributor, or owner; (3) the financial resources of the program provider, distributor, or owner and the financial impact of the program; (4) the cost of the captioning, considering the relative size of the market served or the audience share; (5) the cost of the captioning, considering whether the program is locally or regionally produced and distributed; (6) the non-profit status of the provider; and (7) the existence of alternative means of providing access to the hearing impaired, such as signing.^{11/}

WCA believes that, at a minimum, the Commission should exempt from any closed captioning requirement programming that is distributed so narrowly, it is not economically feasible for the program producer to close caption that programming. WCA anticipates that in response to the *NOI*, the programming community will supplement the record and provide sufficient information enabling the Commission to develop appropriate benchmarks.

^{9/}House Report at 114.

^{10/}As Congress correctly recognized, contracts between program suppliers and distributors, including wireless cable system operators, often preclude the distributor from adding closed captioning. *See* House Report, at 115.

^{11/}*Id.*

Of particular concern to the wireless cable industry is the fact that in most cases a wireless cable system's channel capacity includes up to 20 ITFS channels which the system leases on part-time basis from local educators. As a public service, wireless cable operators often offer to their subscribers some or all of the educational programming provided by schools during the time reserved for ITFS programming. Given the cost of closed captioning, it should come as no surprise that this educational programming (much of which consists of on-campus classroom lectures from a variety of locations) often is not closed captioned at the source. Were the Commission to require the closed captioning of ITFS programming that is distributed to wireless cable subscribers, there is a significant risk that such programming could no longer be offered to subscribers due to the additional equipment and administrative costs associated with implementing closed captioning technology. Accordingly, WCA recommends that any closed captioning regulations ultimately adopted in this proceeding specifically exempt any ITFS programming carried by a wireless cable system.^{12/}

^{12/}Such an exemption for ITFS programming, as well as for any other locally originated programming carried by wireless cable systems, would be consistent with the legislative history of the 1996 Act. There, Congress stated that the FCC shall consider, *inter alia*, the financial resources of the program provider; the cost of the captioning, considering the relative size of the market served or the audience share; and the non-profit status of the provider. House Report at 115. Most ITFS programming is local in nature and is originated by non-profit education institutions who rely heavily on their own limited resources and lease payments from the wireless cable operator to fund ITFS programs. Furthermore, unlike commercial cable programming services, ITFS programming is not advertiser-supported, and its intended audience is usually limited to students interested in a specific academic subject matter rather than the general public as a whole. Most other locally originated wireless cable programming also operates on a very limited budget and has a relatively small target audience. Accordingly, WCA submits that ITFS and other locally-originated programs carried by wireless cable systems are precisely the types of services which Congress intended to exempt from the Commission's closed captioning regulations.

While wireless cable operators generally are prepared to relay whatever closed captioning is provided by program producers, the Commission must also recognize that some technological barriers to implementation of closed captioning do exist. As noted above, most wireless cable operators use scrambling technologies that allow set-top converter boxes to pass line 21 of the vertical blanking interval (the "VBI"), and thus already deliver closed captioned programming where the subscriber's television set has closed captioning capability. There are, however, some wireless cable systems which use scrambling technology which does not allow line 21 to be passed through the subscriber's television set. Thus, to avoid imposing on those systems a need to replace all subscriber set-top boxes and some headend equipment, WCA requests that the Commission grandfather any wireless cable systems using scrambling technology that does not pass line 21 of the VBI.^{13/}

For wireless cable systems that already do pass line 21 of the VBI, the Commission should at most impose closed captioning obligations no greater than those currently imposed on the wired cable industry, *i.e.*, the operator may not remove or alter closed captioning data on line 21, and must deliver that data intact and in a format that can be recovered and displayed by television sets with closed captioning capability.^{14/} Moreover, the subscriber must be responsible

^{13/}It is anticipated that many of these grandfathered systems will eventually convert to digital compression technology, which will allow closed captioned programming to be retransmitted intact to subscribers owning television sets with closed captioning capability.

^{14/}See 47 C.F.R. § 76.606. WCA does not believe that even these technical standards are necessary to ensure provision of closed captioned programming by wireless cable systems. The FCC adopted such standards for the wired cable industry in response to Congressional concerns that scrambling technologies utilized by the cable industry not interfere with the ability of subscribers to receive closed captioned programming. See *Cable Television Technical and*

(continued...)

for purchasing a television set with closed captioning capability or any other equipment which allows reception of closed-captioned programming. WCA believes these suggestions strike a reasonable balance between preserving the inherent efficiency of having programming captioned at the source, and ensuring that such programming remains accessible to hearing-impaired wireless cable subscribers.

Finally, with respect to video description, WCA notes that a number of wireless cable operators currently use the Second Audio Program or "SAP" channel for Spanish language programming, and thus would be required to eliminate that service were the Commission to mandate use of the SAP channel for video description. Moreover, there is evidence that mandatory provision of video description in an analog or digital environment would be very costly to wireless cable operators. Specifically, many set-top boxes used by analog wireless cable systems cannot decode the SAP channel. The only way to address this problem is to replace the electronic components of the boxes themselves, which, given the number of boxes in the field, is neither a practical nor a cost-effective solution for the wireless cable industry. Accordingly, WCA urges that the Commission recommend to Congress that any video description rules ultimately adopted by the agency should grandfather any analog wireless cable systems whose set-top boxes cannot decode the SAP channel.

¹⁴(...continued)

Operational Requirements, 7 FCC Rcd 2021, 2031-32 n.26 (1991). To date Congress has expressed no similar concerns with respect to the wireless cable industry, and WCA is unaware of any instance in which a wireless cable operator has deliberately removed closed captioning on line 21 of the VBI (whether to accommodate scrambling technologies or otherwise), nor is WCA aware of any instance in which a wireless cable system has delivered closed captioned programming in a format that cannot be received by television receivers with closed captioning capability.

Mandatory provision of video description will also impose potentially significant costs on wireless cable operators in a digital environment as well. Because video description occupies much more bit capacity per second than closed captioning, wireless cable operators operating in the digital mode will lose potentially large amounts of bit capacity that might otherwise be used for video, voice and data services over the MDS and ITFS bandwidth.^{15/} Hence, were digital wireless cable systems required to offer video description for a substantial number of programs, they would be forced to devote an unrealistic amount of their system capacity to a service whose demand at the present time is unknown.

Moreover, many television sets in the market today are equipped to receive video description only through the SAP channel, or a television adapter for the SAP channel. For subscribers who do not have either of these items, a digital wireless cable system would be required to deploy set-top converter boxes whose internal circuitry is capable of routing the video description portion of a program directly through the audio components of the subscriber's television set. Again, however, this would require modification of the set-top box at an additional cost to the wireless cable operator. It is already estimated that the cost of decompression equipment will add several hundred dollars to the cost of the set-top unit, and this does not even include costs associated with modifying wireless cable transmission equipment to operate in the digital mode. Accordingly, WCA submits that at most the Commission should consider

^{15/} Specifically, WCA's engineering consultants have estimated that video description for a single program transmitted in the digital mode would occupy approximately 100,000 bits per second, or .5% of the entire bit capacity of a single digitized channel. Thus, for example, mandatory video description for 200 programs would occupy 100% (*i.e.*, 200 X .5%) of one of the thirty-two or thirty-three channels with which an operator must launch a digital wireless cable system.

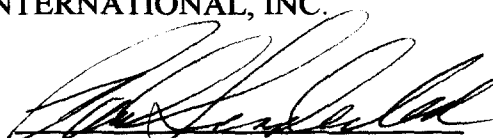
requiring wireless cable systems to offer video description only as an optional service specifically for those subscribers who request it and are willing to pay the one-time marginal cost of having their set-top box upgraded for video description capability.

WHEREFORE, WCA supports the Commission's *NOI*, subject to the proposals set forth above.

Respectfully submitted,

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